

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	
)	
1998 Biennial Regulatory Review --)	
Spectrum Aggregation Limits for Wireless)	WT Docket No. 98-205
Telecommunications Carriers)	
)	
Cellular Telecommunications Industry)	
Association's Petition for Forbearance)	
from the 45 MHz CMRS Spectrum Cap)	
)	
Amendment of Parts 20 and 24 of the)	
Commission's Rules -- Broadband PCS)	WT Docket No. 96-59
Competitive Bidding and the Commercial)	
Mobile Radio Service Spectrum Cap)	
)	
Implementation of Sections 3(n) and 332)	GN Docket No. 93-252
of the Communications Act)	
)	
Regulatory Treatment of Mobile Services)	

REPLY COMMENTS OF U S WEST WIRELESS, L.L.C.

U S WEST Wireless, L.L.C. ("U S WEST") hereby submits its reply comments in support of the comments urging the Federal Communications Commission ("Commission") to retain its 45 MHz broadband CMRS spectrum cap in the above-referenced proceeding.¹

The majority of comments filed in this proceeding demonstrated that there are compelling reasons to keep the CMRS spectrum cap in place: the spectrum cap encourages market entry by new entrants such as U S WEST, it ensures the

¹ See, e.g., comments of the Personal Communications Industry Association ("PCIA"); Sprint PCS; MCI WorldCom, Inc. Notice of Proposed Rulemaking, WT Docket No. 98-205, WT Docket No. 96-59 and GN Docket No. 93-252, FCC 98-308, rel. Dec. 10, 1998 ("Notice"). Comments filed Jan. 25, 1999.

continued presence of multiple market participants, and it promotes innovation and efficiency. Moreover, the CMRS spectrum cap is a “minimally intrusive” form of regulation that is not impeding any carrier’s ability to aggressively compete in the market. While it is premature to remove the CMRS spectrum cap at this time, the Commission should revisit the issue in the next biennial review, at which time the still-nascent PCS industry will have had more time to become more established in the market.

**I. THE CMRS SPECTRUM CAP ENCOURAGES COMPETITION
AND FURTHERS THE PUBLIC INTEREST**

The CMRS spectrum cap, which was instituted less than three years ago, is structured to ensure that there are multiple competitors in the market. In that regard, the spectrum cap is consistent with the Commission’s allocation of six distinct blocks of PCS spectrum to facilitate diversity in the market. As the Commission itself has recognized, these new entrant PCS providers are still in the early stages of competing with incumbent cellular carriers.² The public interest benefits of the CMRS spectrum cap are that it allows new entrants to build a presence in the market and it prevents any single competitor from acquiring an undue concentration of spectrum.

U S WEST agrees with those commenters who stated that PCS has had a significant positive impact in stimulating competition in the CMRS market.³

² Third Annual CMRS Competition Report, 13 FCC Rcd. at 19746, 19749 (1998).

³ See, e.g., Sprint PCS at 8.

However, this competition is still in its early stages.⁴ The Commission's most recent data regarding CMRS competition indicated that 87 percent of all broadband CMRS customers are served by an incumbent cellular carrier.⁵ U S WEST market surveys suggest that, in the five large metropolitan corridors where it currently operates, the incumbent cellular carriers still enjoy more than a 60 percent market share.⁶ As a D-E licensee and thus the fifth entrant in the market, U S WEST faces an uphill battle in gaining market share from these entrenched incumbents.

Not surprisingly, the situation is much worse in rural areas. The Notice indicates that customers in approximately 40 percent of all BTAs nationwide do not have access to either a PCS or digital SMR provider. As Commissioner Gloria Tristani observed, "For these consumers, the cellular duopoly that was uniform at the time we adopted both the cross-interest rule and the spectrum cap, still prevails."⁷ The CMRS spectrum cap preserves diversity in all markets by preventing excessive concentration of spectrum ownership.

Moreover, the CMRS spectrum cap promotes innovation and efficiency. As Sprint PCS correctly observed, the deployment of second generation technologies since the cap was adopted has significantly increased the capacity of CMRS using the same amount of spectrum.⁸ The spectrum cap also has encouraged incumbent

⁴ Id. at 9 (citing Third CMRS Competition Report, 13 FCC Rcd. at 19749).

⁵ Third CMRS Competition Report at Table 5D, Total Year-End Subscribership, Page B-8.

⁶ These markets are Denver, Phoenix-Tucson, Portland, Seattle and the Twin Cities.

⁷ Separate Statement of Commissioner Gloria Tristani attached to the Notice.

⁸ Sprint PCS at 12.

cellular carriers to convert their analog systems to more efficient digital technologies.⁹ With the deployment of third generation technology, spectrum efficiency should continue to increase at a rapid rate under the spectrum cap.¹⁰

II. THE CMRS SPECTRUM CAP IS NOT HARMING COMPETITION

U S WEST agrees with the Commission's prior statement recognizing that the CMRS spectrum cap is a "minimally intrusive means of ensuring that the mobile communications marketplace remains competitive and retains incentives for efficiency and innovation."¹¹ As PCIA noted in its comments, the spectrum cap eliminates the need for the Commission to impose intrusive and costly regulations as a means of protecting the growth of competition.¹² Rather, it serves as a "bright line" rule that is easy to follow and easy to administer. The Commission's spectrum cap strikes the proper balance between overly-burdensome regulation and premature deregulation of a market where competition is still developing.

The CMRS spectrum cap is not harming competition in the CMRS market. A number of commenters make generalized assertions that the spectrum cap must be eliminated to accommodate new services, but their claims are entirely speculative.¹³

⁹ PCIA at 12.

¹⁰ Sprint PCS at 13.

¹¹ In the Matter of Implementation of Sections 3(n) and 332 of the Communications Act, et al., Third Report and Order, 9 FCC Rcd. 7988, 7999 ¶ 16 (1994).

¹² PCIA at 7.

¹³ SBC Wireless, Inc. makes the vague claim that its network is "fully utilized in delivering quality voice traffic," but it also concedes that it has been able to convert its principal cellular markets from analog to digital in order to more efficiently utilize its existing spectrum. SBC Wireless at 10. That is exactly the response the spectrum cap is designed to encourage.

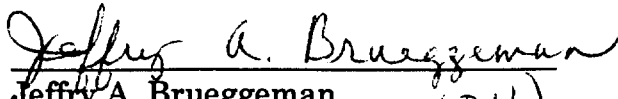
In the five metropolitan corridors where U S WEST has entered the market, no carrier holds more than 35 MHz of CMRS spectrum throughout the MTA or BTA, let alone the 45 MHz permitted under the cap.¹⁴ As wireless applications evolve and additional spectrum is made available (e.g., as part of the proceeding considering whether to allocate additional spectrum for 3G technologies), the Commission can and should examine the need for raising the cap.¹⁵ Doing so at this time, however, is simply premature.

For these reasons, the Commission should retain the CMRS spectrum cap and revisit the issue in the next biennial review.

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Of Counsel,
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February 10, 1999

¹⁴ Sprint PCS found that only one carrier holds 45 MHz of CMRS spectrum in only one BTA nationwide, which shows that U S WEST's markets are not unique. Sprint PCS at 14. Moreover, Western Wireless has waiver petitions pending as to 55 MHz it holds in MTA/cellular population overlaps represented to be 13.6% in the Denver MTA and 11.63% in the Oklahoma City MTA. Western Wireless at 6-7.

¹⁵ U S WEST has advocated that, in the event the spectrum cap impacts the ability of some PCS carriers to provide 3G services, the cap should be raised rather than entirely eliminated. In the Matter of Spectrum Issues Related to Third Generation Wireless/IMT-2000, Report No. IN 98-48, Amended Comments of U S WEST, Inc. filed Oct. 5, 1998 at 7-8.

CERTIFICATE OF SERVICE

I, Rebecca Ward, do hereby certify that on this 10th day of February, 1999, I have caused a copy of the foregoing **REPLY COMMENTS OF U S WEST WIRELESS, L.L.C.** to be served, via first class United States mail, postage prepaid, upon the persons listed on the attached service list.


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